



# Environmental Times

A newsletter for Coast Guard environmental management and compliance

## New Spill Prevention Control and Countermeasure Rule

*Submitted by Mark Zill, G-SEC-3*

The Environmental Protection Agency (EPA) has amended the Oil Pollution Prevention regulation including requirements for Spill Prevention, Control, and Countermeasure (SPCC) Plans, and for Facility Response Plans (FRPs). The SPCC rule can be found in Title 40 of the Code of Federal Regulations (CFR) Part 112 (Oil Pollution Prevention). The rule applies to owners or operators of facilities that store or use oil and oil products and who could discharge oil in amounts that may harm navigable waters or adjoining shorelines. EPA proposed revisions to the SPCC rule in 1991, 1993, and 1997. Those

revisions became effective on August 16, 2002.

### Background of the Oil Pollution Prevention Regulation

The goal of the requirements in 40 CFR Part 112 is to prevent oil discharges from reaching navigable waters of the United States or adjoining shorelines. The rule was also written to ensure effective responses to oil discharges. The rule specifies that proactive, and not passive, measures be used to respond to oil discharges. The regulation contains two major types of requirements: prevention

requirements (SPCC rule) and facility response plan (FRP) requirements. Required under the rule is an SPCC Plan that contains measures to prevent and control oil spills, including those resulting from human operational error or equipment failures.

### General Applicability

The rule includes new subparts outlining the requirements for various classes of oil; revises the applicability of the regulation; amends the requirements for completing SPCC Plans; and makes other modifications.

*(Continued on page 2).*

### In This Issue

Migratory Bird Study.....	3
Hurdles on the Road .....	3
The Farm Security and Rural Investment Act .....	4
U.S. Army's Free Environment Service.....	5
Universal Waste Program .....	5
NPDES Source.....	5
Environmental Extras .....	6
Year of Clean Water.....	6

## Environmental Award Programs for the Coast Guard for 2002

This fall will kick off another round of environmental award competitions for Coast Guard personnel. There are three environmental award programs for which Coast Guard personnel are eligible addressing individuals, teams, and units. In addition, the Office of Civilian Personnel (G-WPC) annually solicits nominations for the Annual DOT Awards Ceremony, with awards in the following categories:

- ☐ Partnering for Excellence
- ☐ Meritorious Achievement (Silver Medal)
- ☐ EEO/Affirmative Action
- ☐ Volunteer Service, Team
- ☐ Valor

This ceremony is scheduled each November. For more information, see ALCOAST 313/02.

*(Continued on page 2)*

## New Spill Prevention Control and Countermeasure Rule

(Continued from page 1)

### Some of the significant changes in the Regulation:

- ❑ Requires updated SPCC Plans to meet the new requirements by February 17, 2003;
- ❑ Requires implementation of the revised plan by August 17, 2003;
- ❑ Revises the SPCC Plan update cycle from 3 years to 5 years;
- ❑ Requires secondary containment for tanker trucks loading/unloading at storage tanks;
- ❑ Requires periodic integrity tests on aboveground tanks
- ❑ Exempts facilities with completely buried storage tanks regulated under 40 CFR Parts 280 or 281;
- ❑ Exempts any facility or part thereof used exclusively for wastewater treatment and not to meet any part 112 requirement;
- ❑ Establishes a de minimis container size of 55 gallons;
- ❑ Establishes an aboveground storage capacity threshold of more than 1,320 gallons and removes the 660 gallon provision;
- ❑ Revises the threshold for reporting discharges to EPA to over 42 gallons combined in 2 discharges in any 12-month period;

- ❑ Increases Professional Engineer certification requirements;
- ❑ Allows deviations when equivalent environmental protection is provided;
- ❑ Provides for a flexible plan format, with a cross-reference showing that all regulatory requirements are met; and
- ❑ Clarifies rule applicability to the storage and operational use of oil.

### Facility Response Plan Considerations

The revisions in the SPCC rule may affect whether you need to prepare and maintain a Facility Response Plan (FRP) or how you calculate worst case discharge planning levels. In some cases, your facility may not meet the storage capacity thresholds for the substantial harm criteria. In other cases, you must have an FRP, but you may be able to revise the calculations for worst-case discharge planning levels. According to the 2002 rule, the regulation no longer applies to the following:

- ❑ Completely buried tanks that are subject to Underground Storage Tank requirements in 40 CFR parts 280 and 281;
- ❑ Containers with a storage capacity of less than 55 gallons; and
- ❑ Certain facilities used exclusively for wastewater treatment.

## Environmental Awards Programs (continued from page 1)

Below is the information on the three other award programs.

### USCG Environmental Award (Closing date: 15 November 2002)

- ❑ Award criteria were expanded last year via COMDTINST 5090.5B, see <http://isddc.dot.gov/>
- ❑ USCG will announce this program via G-SEC-3's website, and by email and ALCOAST ooa 1 Oct 2002.
- ❑ Winners are notified in January, and announced via ALCOAST and the HQ website.
- ❑ See Environmental Times and Systems Times, Summer 2002 for last year's winners.

### DOT Environmental Achievement Award (Closing date: 15 December 2002)

- ❑ There are 10 criteria for this award, and the focus is on EO 13101.
- ❑ This year the criteria will expand to include procurement of bio-based products.
- ❑ DOT announces this program via their website and by message in October. This program is announced via ALCOAST along with the USCG program ooa 1 Oct 2002.
- ❑ Winners are listed on the DOT website after being notified individually <http://osam.ost.dot.gov/recycling.htm>.
- ❑ See Environmental Times and Systems Times, Summer 2002 for list of winners of the DOT award for last year.

### White House Closing the Circle Award (CTC) (Closing date: 31 January 2003)

- ❑ This will be the ninth year of this program, and this year the criteria will expand to include procurement of bio-based products.
- ❑ All winners of the DOT award are automatically nominated for this award.
- ❑ OFEE announces this program on their web site and via message each Fall.
- ❑ Winners will be listed on the OFEE website ooa Earth Day (22 April, 2003) after being notified individually see <http://ofee.gov>
- ❑ See Environmental Times and Systems Times, Fall 2002 for Coast Guard winners of the WHCTC award for last year.

## NEWS

### Migratory Bird Study

*Submitted by Dustin Bitternman and Zante Capuno, G-SEC-3*

The Coast Guard is currently conducting an informal migratory bird study to gather information preliminary to developing a Memorandum of Understanding (MOU) between the Coast Guard and the Fish and Wildlife Service—the agency charged with obtaining federal compliance with laws pertaining to migratory birds.

In recent years, the Migratory Bird Treaty Act (MBTA) has resurfaced as an enforceable piece of legislation. Originally enacted in 1918 to quell rampant hunting of migratory birds, it has recently come back into focus due to the large number of deaths of migratory birds caused by communications towers, particularly those of more than 200' in height. The Fish and Wildlife Service offers a conservative estimate in the thousands per year based on long-term research studies done in and around communications towers.

The Coast Guard is in the process of examining its communication towers to see how they may contribute to this problem. Guy wires may be culpable, although we have no direct data to indicate how many migratory birds are affected annually. Another element that serves to attract the birds is lights. Some birds are attracted to them and may become disoriented when they see them. Reports of birds attracted by the lights of commercial towers, for example, circling the towers at night until they become exhausted and drop from the sky, are not uncommon. Some suggestions that have been proposed are reducing the number of guy wires and replacing flashing lights with strobe lights, as they seem to hold less of an attraction for the birds.

The piping plover and the least tern, two migratory birds that are also endangered species, have been documented as residing at Coast Guard facilities.

We expect to have the data search portion of this effort (Phase One) prepared by December 2002.

---

### Hurdles on the Road to “Yes” or What Do You Do When They Change All the Rules?

*Submitted by Francis H. Esposito, G-LEL*

The Coast Guard, along with the Department of Defense, the Environmental Protection Agency, Bureau of Indian Affairs, and Department of Interior are

trying to clean up the contamination on Annette Island, Alaska. The island is home to the Metlakatla tribe and is the only Indian Reservation in the State of Alaska. The federal agencies are successors to various groups that polluted the island while conducting flying and other operations prior to the 1980's. Clearly, federal agencies have a duty to clean up sites where they were the owner or operator or where they arranged to have waste dumped. The issue at Annette Island is not whether the Coast Guard will clean up the various sites, but how. The easiest method would have been to have the island placed on the national priority list (NPL) under CERCLA. Unfortunately, the tribe rebuffed the EPA when it began this process. This left each agency to deal with its individual sites, while collectively seeking some alternate form of organization. The process the parties have pursued can only be described as a bumpy road that must be traveled in “getting to Yes.”<sup>1</sup>

The Coast Guard maintains that the sites it previously owned and transferred to the Metlakatla Indian Tribe in the early 1970's were in very good condition. The facilities, however, were subsequently not maintained and allowed to become environmental hazards. While the Coast Guard, FAA, and DoD have completed numerous cleanup efforts on the island, the Coast Guard has resisted efforts to mandate specific clean-up plans because we were concerned that there was no clear plan to fairly allocate liability. Hopefully, recent initiatives will resolve those concerns.

In 2001, Annette Island was named a part of the Environmental Justice Showcase. The goal of the Showcase Project is to identify, mobilize, and efficiently utilize Federal resources in a coordinated effort to benefit distressed communities. Many of the Alaska Native issues specifically relate to environmental justice criteria such as disproportionately high and adverse human health or environmental effects, and the risks associated with subsistence consumption of pollutant-bearing fish and wildlife.

As a sovereign tribal authority, the Metlakatla Indian Tribe created its own regulations for clean-up levels. The tribe maintains that each prescribed limit must be met even where the cost of exceeding national standards would be excessive.

*(Continued on page 4)*

---

<sup>1</sup> Apologies to Fisher, Ury and Patton *Getting to Yes*, Houghton Mifflin, 1981, perhaps the best known source on negotiation skills for the past decades.

## Hurdles on the Road to “Yes”

*(Continued from page 3)*

The federal agencies believe cleaning up to background levels will suffice in most cases. The practical difference between the tribal and CERCLA levels would translate into billions of dollars of excess cleaning.

To date, no sites have been closed out by federal agencies. Thus far, the agencies have completed initial investigations of contamination on the island, and conducted several removal actions. However, the clean-up activities are now advancing to a point in which more extensive and expensive efforts to design and implement final cleanup will be required.

There is no agreement among the federal agencies, private entities, and the tribe on how the costs of the Remedial Design and Remedial Action (RD/RA) clean-up actions will be shared. Without a cost-sharing agreement for future clean-up actions, the federal agencies will not be able to justify budget requests to Congress and the White House Office of Management and Budget for clean-up activities over the next few years.

As the owner/operator of virtually all facilities, the Metlakatlan Indian Tribe would face some share of the liability. It is clear, however, that the tribe will be unable to fund its share of the clean-up cost. Unfortunately, the agency that might best represent the tribe in this effort, BIA, also faces near zero funding allocation, in general, and zero for this project.

The Environmental Justice work group believes that the only way to achieve an agreement on how to share responsibility for cleanup is to hire an independent professional allocation specialist to develop a neutral allocation methodology. If we are to proceed along these lines, it will be essential that the Metlakatlan Indian Tribe participate in the process to allocate clean-up costs and share some of the liability.

The Coast Guard certainly hopes that the parties will be able to resolve the “How clean is clean?” issue in the near future. There is a promising development in that regard: the tribe has promulgated its own waiver process that may be of some use in getting to “yes” on the questions of site closure. The funding problem may be insoluble. At the very least, the Coast Guard can fund its share of the cleanup with some hope of reaching a final conclusion.

The Metlakatlan Indian Tribe experience illustrates how a slight alteration in a few facts can change all that seemed obvious about clean up situations. What looked, to the untrained eye as a simple CERCLA clean up effort, became a very tough challenge for diplomats and engineers. The fact that one of the parties is more than

just a polluter and a tribal nation makes it exponentially more difficult.

## P2 and YOU

### The Farm Security and Rural Investment Act

On May 13, 2002, the President signed the Farm Security and Rural Investment Act of 2002 (the farm bill) to help save the farm industry from its dire outlook. Section 9002 of the Act establishes a biobased-products purchasing program similar to the buy-recycled program established under Resource Conservation and Recovery Act (RCRA). The U.S. Department of Agriculture (USDA) will designate biobased products for federal agencies to purchase. The Coast Guard, like other federal agencies, will be required to establish affirmative procurement programs to purchase these products unless there is a price, performance, or availability reason not to do so.

Some other features of Section 9002 include requirements for vendors as well as mandates for the USDA, General Service Administration (GSA), and Department of Commerce (DOC).

Federal agencies are required to comply with the requirements set forth in Section 9002, with respect to the purchase of an item of \$10,000 or more or where the quantity of such items or of functionally equivalent items purchased in the preceding fiscal year was \$10,000 or more. Additionally, procurement decisions must give preferences to items composed of the highest percentage of biobased products practicable (with some noted exceptions).

The Coast Guard has 1 year to develop a procurement program to assure compliance with the Act. The program must contain a preference program, a promotion program, annual effectiveness review provisions, and options for awarding contracts to vendors with the highest percentage of biobased products or with consistent minimum content standards.

Vendors will be required to certify that the biobased products used will comply with the applicable bio-specs. To this end, the Act encourages a voluntary labeling program for industry, similar to ozone depleting substance and volatile organic compound labeling that we see on products now.

*(Continued on page 5)*

## The Farm Security and Rural Investment Act

(Continued from page 4)

USDA, GSA, and DOC are required to keep federal agencies up to date by regularly issuing guidelines and practices for agencies for procuring these products. They are also required to provide information regarding availability, relative price, performance, and environmental and public health benefits of these products within 180 days of the enactment of the Act.

Next year's White House Closing the Circle (CTC) Awards will support the program by adding biobased product procurement as a new, ninth criteria. Additionally, the Federal Environmental Executive will work with USDA to increase procurement of soy-based inks, citrus-based and other biobased cleaning products, absorbents, ethanol, biodiesel, lubricants, compost, and mulch.

For further information on this topic, please see: [www.ofee.gov/whats/bbfarm.html](http://www.ofee.gov/whats/bbfarm.html).

### NEWS YOU CAN USE

#### U.S. Army's Free Environmental Service

Fielding Environmental Solutions is provided to you by the U.S. Army Environmental Center's Pollution Prevention/Compliance, Acquisition, and Technology Implementation (P/CAT) Division. The purpose of this service is to provide subscribers information on recently published documents and field demonstrations of innovative technologies and to highlight technology transfer efforts of the P/CAT Division. Important messages will be disseminated via email monthly. This will highlight new publications and events of interest to site remediation and site assessment professionals. This free service is a method of bridging the gap between developers, regulators, and users of innovative technologies. For more information see <http://aec.army.mil/usaec/technology/fes00.html>.

#### Easing Your Regulatory Burden Under the Universal Waste Program for Lamp Disposal

The Environmental Protection Agency issued the Universal Waste Regulations in 1995 to reduce the amount of hazardous waste items in the municipal solid waste stream, encourage recycling and proper disposal of several common hazardous wastes, and reduce the regulatory burden on businesses that generate these wastes.

Universal waste is not subject to the same accumulation limits as hazardous waste and does not count toward generator status. The universal waste rules can be used by large and small quantity generators and treatment, storage, and disposal facilities (TSDFs).

40 CFR 273.9 defines a universal waste lamp as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infrared regions of the electromagnetic spectrum. Examples of common universal waste lamps include, but are not limited to, fluorescent, high-intensity discharge, neon, mercury vapor, high-pressure sodium, and metal halide lamps.

For more information of the Universal Waste Rules see the EPA's web site at <http://www.epa.gov/epaoswer/hazwaste/id/univwast.htm>

#### What is a National Pollutant Discharge Elimination System Source?

National Pollutant Discharge Elimination System (NPDES) regulations apply to pollutant discharges from a point source to waters of the United States. A point source, as identified at 40 CFR 122.2, means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants may be discharged. Point sources may be natural or man-made structures that enable the flow of discharge.

NPDES regulations outline prohibitions applying to circumstances when a permit may not be issued in Section 122.4. Permits may not be issued when:

- ❑ The conditions of the permit do not provide for compliance with the applicable requirements of the Clean Water Act (CWA) or its regulations.
- ❑ The regulating authority (EPA or state environmental agency) objects to the issuance of a permit.
- ❑ The applicant has not obtained required certifications under Section 401 of the CWA, or 40 CFR 124.53 (state certification).
- ❑ The imposition of permit conditions cannot ensure compliance with applicable water quality requirements.
- ❑ In the judgment of the Chief of Engineers of the Army Corps of Engineers, navigation or anchorage in waters of the United States would be impaired.
- ❑ There is a discharge of radiological, chemical, or biological warfare agent, or high-level radioactive waste.
- ❑ Discharge from new source or new source construction will cause or contribute to a violation of water quality standards.

(Continued on page 6)



## What is a NPDES Source?

(Continued from page 5)

If any of the aforementioned conditions exist in a discharge, that discharge may not be covered by a NPDES permit.

### Is Your Storm Water Permit About to Expire?

According to 40 CFR 122.21(d), any publicly owned treatment works (POTW) that is currently covered by a NPDES permit must submit a new application at least 180 days before the expiration of the existing permit, unless a later date has been granted by the regulating authority. Similarly, industrial dischargers, must submit a new application at least 180 days before the expiration of the existing permit. The regulating authority may authorize a later date for application only no later than the date on which the existing permit expires. States with NPDES delegated authority may have different reapplication deadlines than EPA requirements.

*Did you know most EPA and state permits for storm water discharges require annual training? Check your permit.*

## Environmental Extras

### New Staff Member Joins SEC-3

**Shari Tavel** recently joined the staff of the Environmental Management Division (SEC-3). Ms. Tavel has more than 10 years of professional experience managing Government and private sector projects in the compliance and emergency services, and information services fields. For the Office of Response (G-MOR), Ms. Tavel has managed the vessel response plan project for 8 years. Through that experience, she has acquired an extensive, practical knowledge in Oil Pollution Act of 1990 legislation, marine environmental protection, oil spill response and mitigation, oil spill removal organizations, and emergency response management systems. In her new position, Ms. Tavel is responsible for the financial management of the Coast Guard's Environmental Compliance and Restoration account including annual and multi-year fiscal planning.

### Fond Farewell

My name is **Dustin Bitterman**. For the past two months, I have been interning in the Environmental Management Division (G-SEC-3) under Mr. Ed Wandelt and benefiting from the guidance of Dr. Ken Malmberg, my mentor for these past few weeks.

I interned for G-SEC-3 last summer as well, becoming intimately acquainted with the inner workings of the Coast Guard's environmental policy program. This summer I have

become knowledgeable about the continuing importance of environmental issues in the Coast Guard's renewed mission. I have been working to keep the Qualified Recycling Program up to date, as well as gather background information for the Memorandum of Understanding the Coast Guard is developing with the Fish and Wildlife Service dealing with the Migratory Bird Treaty Act. I have come to understand the stress the Coast Guard is under to make do with outdated systems and limited funding, specifically relating to its environmental programs. I feel that I have benefited greatly by my visit to Training Center Cape May in Cape May, New Jersey, and to the Loran Support Unit in Wildwood, New Jersey, which gave me a deeper understanding of the demands placed on the Coast Guard on a day-to-day basis.

As my internship is coming to an end, I am looking forward to returning to college. I will be a senior this year at Illinois Institute of Technology in Chicago, where I study Electrical Engineering.

I would like to thank the Coast Guard for providing me with the opportunity to again intern with the Environmental Management Division in Civil Engineering. I feel that I have greatly benefited from these past 8 weeks, and will be able to apply this knowledge to future endeavors, whether they be with the Coast Guard or otherwise. I would also like to personally thank all of the members of G-SEC-3 for making this experience an enjoyable one, as well as making the transition into the oft-misunderstood world of environmental policy.

### Year of Clean Water Events

October 18, 2002 marks the 30<sup>th</sup> anniversary of the enactment of the Clean Water Act—a milestone in the efforts to protect our nation's water resources.

This fall there are a series of events to commemorate the signing of the Clean Water Act. Government agencies and private organizations are sponsoring activities to enhance public appreciation for the importance of our nation's water resources, celebrate successes, build a better understanding of remaining challenges and solutions, and rekindle the public stewardship ethic and support for watershed protection programs. A complete list of events can be found at: <http://www.yearofcleanwater.org/>

Coasties are encouraged to join Federal monitoring staff; State, local, and Tribal staffs, monitoring organizations, and citizen monitors in National Water Monitoring Day on October 18, 2002. For more information, see the Year of the Clean Water web site.

Commandant (G-SEC)  
U.S. Coast Guard  
2100 2<sup>ND</sup> St. SW  
Washington, DC 20593-0001



**PUBLISHED BY**

Commandant (G-SEC)  
U.S. Coast Guard  
Office of Civil Engineering  
Environmental Management Division  
2100 2<sup>ND</sup> St. SW  
Washington, DC 20593-0001

**EDITORS & CONTACT INFORMATION**

Martin Nguyen  
U.S. Coast Guard  
Environmental Management  
Division  
(202) 267-2342  
[mnguyen@comdt.uscg.mil](mailto:mnguyen@comdt.uscg.mil)

Kim Costner Moore  
Potomac Management Group, Inc.  
(703) 836-1037  
[kcostnermoore@potomacmgmt.com](mailto:kcostnermoore@potomacmgmt.com)

*In support of our environmental mission and goals for a paperless office, if you are currently receiving a paper copy of the publication and are capable of receiving it electronically, please notify Martin Nguyen.*

*The Environmental times is a quarterly publication designed to keep Coast Guard personnel apprised of environmental issues impacting Coast Guard facilities, operations, planning, and policy making. We encourage you to share your stories and successes as environmental stewards.*